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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,967	11/01/2000	Michael Evans	19744P-000180	4430

20350 7590 08/26/2002

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EXAMINER

HAN, MARK K

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 08/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SM/

**Office Action Summary**

Application No.	Applicant(s)	
09/704,967	EVANS ET AL.	
Examiner	Art Unit	
Mark K Han	3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 May 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-40,42 and 44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-40,42 and 44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102***

1. Claims 38-40, 42 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,304,115 to Pflueger et al. (hereinafter "Pflueger").

In reference to claims 38, 39, 42 and 44, Pflueger discloses an angioplasty device for ablating occluding lesions having a source of mechanical motion 24; an elongate vibratory motion catheter 12 having a proximal portion, a distal portion and a longitudinal axis therebetween, the catheter engaged with the source of motion and a wire 20. The catheter oscillates, due to the inherent nature of vibratory motion, translates (col. 12, lines 1-8) and rotates (col. 12, lines 9-17). See also Figures 1-5. The method is also disclosed (col. 9, lines 1-41).

In reference to claim 40, Pflueger does not expressly disclose that the vibratory motion at the distal end is greater than the proximal end of the catheter. However, it is inherent that the Pflueger device possesses these properties. The portion of the wire at the distal end of the catheter is not restricted within the catheter body and thus, can move about freely. On the other hand, the portion of the wire at the proximal end of the catheter is restricted within the lumen and thus, cannot move about as freely as the portion at the distal end.

Art Unit: 3763

*Response to Arguments*

2. Applicant's arguments with respect to claims 38, 39, 40 and 42 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K Han whose telephone number is 703-308-4543. The examiner can normally be reached on Monday-Friday 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*mkh.*

Mark Han  
Patent Examiner  
Art Unit 3763

mkh  
August 15, 2002

*Brian L. Casler*  
**BRIAN L. CASLER**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**